

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 1144/94.

DATE OF DECISION: 01/10/99

vinubhai Holiabhai Varli _____ Applicant.

Shri I.J.Naik _____ Advocate for
Applicant.

Versus

Union of India & 3 Ors. _____ Respondents.

Shri R.K.Shetty _____ Advocate for
Respondent(s)

CORAM

Hon'ble Shri B.N.Bahadur, Member(A)

Hon'ble Shri S.L.Jain, Member(J)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to
other Benches of the Tribunal? No

abp.

B.Sabade

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1144/94.
DATED THE ____ DAY OF SEPT, 99.

CORAM; HON'BLE SHRI B.N.BAHADUR, MEMBER(A).
HON'BLE SHRI S.L.JAIN, MEMBER(J).

Vinubhai Holiabhai Varli,
at Amli-Baldevi,
P.O.:SILVASA
Pin Code No.396 230. ... Applicant.
By Advocate Shri I.J.Naik.

v/s.

1. The Development Commissioner,
Development Commissioner, Nagar Haveli,
Daman & Diu and Dadra &
Secretariat,
P.O.:MOTI DAMAN - 396 220
 2. The Assistant Inspector
General of Police,
Dadra and Nagar Haveli,
P.O.:SILVASA,
Pin Code No. 396 230.
 3. The Administrator of UTs of
Daman & Diu and Dadra &
Nagar Haveli, Secretariat,
P.O.:MOTI DAMAN-396 220.
 4. Union of India, through :
The Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block, New Delhi.

... Respondents.

By Advocate Shri R.K.Shetty.

(ORDER)

(Per Shri B.N.Bahadur, Member(A))

This is an application made by Shri Vinubhai Holkiabhai Varli, seeking the relief, in substance, as follows:-

- a) (Annexure A-1) to be declared as null and void, being illegal.

228

b) Order of reinstatement of the applicant and for payment of arrears during the Interim period between his removal and to date.

2. The facts of the case, in brief, are that the applicant who was recruited under direct recruitment quota as a Sub Inspector of Police in the Dadra & Nagar Haveli Administration vide order dated 12/8/92 has been ordered to be terminated vide the Impugned order dated 27/10/94. The reasons mentioned in the text of the Impugned order for termination of the Services of applicant are that

- (a) He did not complete his probation satisfactorily and
- (b) That he had wilfully suppressed material facts in his Attestation form dated 15/8/92.

3. The assertion made by the applicant is, in brief, that the order is one of dismissal, really speaking, and that the action of the respondents in terminating his services are punitive in nature as no termination of services can be made without proper enquiry as per settled law. The applicant has made detailed contentions in furtherance of this main argument in his application citing a High Court judgement in 1973 NPLJ 666 in his support.


Ard

information/giving wrong information sticks.

6. It is on both these grounds that the action vide Impugned order has been taken, avers the respondents.

7. We have heard both learned counsels on both sides, who took us over the various facts as contained in the documents. Their arguments rested mainly on the averments and contentions as made in the OA and the reply statement respectively. Both learned counsels argued at length on the point raised and recapitulated above. The following citations were referred to by the learned counsel for applicant.

- (a) I.L.L.J-SC-174 (D.P.Banerjee v/s. S.N.Bose)
- (b) 1997(3)(CAT) A.I.S.L.J - 503 (T.K.Mukherjee v/s. Union of India & Ors).

8. The learned counsel for respondents referred to the following cases in his support.

- (a) D.K.Dodge v/s. Union of India and Anr. (OA.174/99). dated 19/3/99 of Mumbai Bench.
- (b) E.Jebamani v/s. Union of India & 3 Ors. (O.A.No.919/95) dated 13/8/99 of Mumbai Bench.

4. In regard to the point relating the inability of the applicant to complete his probation successfully, it is stated that he had failed only in one paper and that he could be given one further chance for this.

5. The respondents have filed a reply statement in which all allegations made and in which it is pleaded that the application deserves to be dismissed. The basic points made in the reply statement of the respondents are as follows:-

(a) Applicant has failed to pass the examination held in July, 93 at the Nasik Academy and subsequently in his second attempt in October, 93 also failed the examination. It is contended that as per rules (Annexure-C) no further chance is available.

(b) At the time of joining service certain information was filled up by the applicant in the Attestation Form as required under normal rules. In this declaration in column No.12 he had declared that he was not involved/arrested in any criminal case whereas infact some criminal case had been registered and had been pending against him. Details of this case have been given in paragraph-6 of the respondent's reply statement.

(c) It is contended that former or later acquittal and cases in these Criminal Cases is not relevant as a charge of concealing

Abd

information/giving wrong information sticks.

6. It is on both these grounds that the action vide Impugned order has been taken, avers the respondents.

7. We have heard both learned counsels on both sides, who took us over the various facts as contained in the documents. Their arguments rested mainly on the averments and contentions as made in the OA and the reply statement respectively. Both learned counsels argued at length on the point raised and recapitulated above. The following citations were referred to by the learned counsel for applicant.

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b/s

9(a) The learned counsel for the applicant strenuously contended that in regard to the first issue i.e. the applicant having failed in the examination at the Nasik Academy, it could be stated he had failed only in one paper, albeit on two occasions. This is not something so serious that call for the applicant being deprived of his job. In regard to the second point about the applicant suppressing information, it was argued by learned counsel for applicant that, the applicant had stood acquitted in the cases that were pending against him. As the information provided in the Attestation Form, shows information provided in the Attestation Form, shows Annexure-D, it is filled up on 15/8/92.

9(b) It is argued by respondents counsel that the fact that he was acquitted is not relevant. From a perusal of the letter at Annexure-E filed by respondents, it is seen that this is a report dated 29/4/94 where 5 cases are listed registered between 26/2/88 and 11/5/91. ~~In two of these cases, there is 26/2/88 and 11/5/91.~~ In two of these cases, there is acquittal but in the remaining three, the cases are still shown as pending. Thus, the Counsel for Respondents there is no doubt that the information in regard to the fact information regarding the pendency of criminal cases was not truthfully provided and infact, in para-12 of the Attestation Form of queries have been answered in the negative.

10. Now let us examine the citations of cases brought forth before us as listed in paras 7 & 8 above. In the first case cited on behalf of applicants, it is seen that the Hon'ble Supreme Court had held on facts and circumstances that a definite stigma was cast on the party concerned; on the other hand in the facts

and circumstances of the case before us it cannot be held that the position was similar, or that the action in terminating the probation of the applicant was punitive. It is a simply case of termination of probation.

11. In the second citation made by ~~Counsel~~ for applicants, it is observed that the case relates to forgery, and it was held that the action of fraud did call for an enquiry. The judgement in the case cited would not help the applicant in this case, either, in the facts and circumstances discussed already.

12. On the other hand, it is observed that in the case of Dodge v/s. Union of India cited at by respondents it has been held that since the applicant has suppressed the information pertaining to the case against him, "the respondents are not bound to keep him in service particularly, when he is still temporary servant on probation...." This ratio would be relevant and applicable to the present case. In the judgement cited in the case ~~DA-919/95 Mumbai Bench~~ this issue Bnd this issue is discussed in great detail. The basic issues in the case are similar to those in the present case before us. Since detailed reasonings have been

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provided in the orders in the case in DA 919/95, it is not

Bnd

necessary for us to repeat them here. This case can be justifiably decided in terms of the decision in the two cases cited by learned counsel for respondents.

14. It is also seen that apart from fact that applicant withheld vital information, there is also a reason advanced by Respondents that the performance of the applicant is not satisfactory. This ground certainly adds justification to the action taken by the respondents.

15. In view of the discussions made above no grounds is made out which will call for our intervention in the present case. It therefore deserves to be dismissed.

16. Consequently, this application is hereby dismissed with no orders as to costs.

S.L.JAIN
(S.L.JAIN)
MEMBER(A)

abp

B.N.Bahadur
(B.N.BAHADUR)
MEMBER(A)
01/10/94